

CHAPTER 1 OVERVIEW

C1.1 CONCEPT AND BACKGROUND

These Final Governing Standards (FGS) were developed by comparing and adopting the more protective requirements of the United States (U.S.) Department of Defense (DoD) Overseas Environmental Baseline Guidance Document (OEBGD) and German national and state (*Land*) environmental laws and regulations, and applicable international agreements.

These FGS are the single definitive source of environmental compliance criteria applicable to DoD installations and to U.S. Forces' activities in the Federal Republic of Germany. These standards are minimum requirements; component policy may impose additional requirements.

The revised North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) Supplementary Agreement (SA) came into effect on 29 March 1998. Article 53 of the NATO SOFA SA states that German law applies within a DoD installation unless the DoD activities have no foreseeable effect on the rights of third parties or on adjoining communities or the general public. Where host nation law applies in connection with the use of military accommodations, and the standards of host nation law are more protective of the environment than those contained in these FGS, then the applicable host nation law shall take precedence. Determination of the more protective standard shall be made by the Environmental Executive Agent in accordance with the provisions of the revised SA to the NATO SOFA and the requirements of DoDI 4715.5.

C1.2 SCOPE

This document provides environmental standards for actions for DoD components at installations in Germany. An installation is defined as a base, camp, post, station, yard, center, or activity under the operational control of the Secretary of a Military Department or the Secretary of Defense.

These standards are for those activities and facilities that DoD components have been or are most likely to be engaged in. If a DoD component plans to, or will, engage in an activity or have a facility for which no FGS exist and which is regulated under the OEBGD, the component will contact the Environmental Executive Agent and the Environmental Executive Agent will provide the appropriate FGS to follow.

Owned or leased facilities that are operated or maintained by DoD components must comply with these standards when, and to the extent that, the component controls the operation or maintenance activity(ies). At leased facilities operated and maintained by others, DoD components may opt to require compliance with these standards by the lessor or contractor. In any case lessors and contractors must fully comply with German legal requirements.

This document does not apply to:

1. Installations that do not have more than de minimis potential to affect the natural environment (e.g., offices whose operations are primarily administrative, including defense attaché offices, security assistance offices, foreign buying offices and other similar organizations), or

activities which DoD components exercise control over only on a temporary or intermittent basis.

2. Leased, joint use and similar facilities to the extent that DoD does not control the instrumentality or operation that the criterion seeks to regulate.
3. Operations of U.S. military vessels or the operations of U.S. military aircraft, or off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when U.S. forces are operating as part of a multi-national force not under full control of the United States. Such excepted operations and deployments shall be conducted in accordance with applicable international agreements, other DoD Directives and Instructions, and environmental annexes incorporated into operation plans or operation orders. However, this document does apply to support functions for U.S. military vessels and U.S. military aircraft provided by the DoD components, including management or disposal of off-loaded waste or material.
4. Facilities and activities associated with the Naval Nuclear Propulsion Program, which are covered under Executive Order (E.O.) 12344, "Naval Nuclear Propulsion Program," and conducted pursuant to 42 U.S.C. 7158.
5. The determination or conduct of remediation to correct environmental problems caused by DoD's past activities, conducted in accordance with DoD Instruction (DODI) 4715.8, "Environmental Remediation Overseas."
6. Environmental analyses conducted under E.O. 12114, "Environmental Effects Abroad of Major Federal Actions."

This document was developed based on the fact that DoD activities are located primarily in the German *Länder* (states) of Baden-Wuerttemberg, Bayern, Hessen and Rheinland-Pfalz. If DoD activities are, or will be, located in any other state, the Environmental Executive Agent should be contacted to determine if there are any changes in the FGS applicable in the other states.

This document does not create any rights or obligations enforceable against the United States, DoD, or any of its components, nor does it create any standard of care or practice for individuals. Although the document references other DoD directives and instructions, it is intended only to coordinate the requirements of those directives/instructions as required. This document does not change other DoD or service directives or alter DoD or service policies.

C1.3 RESPONSIBILITIES

It is DoD policy under the DODI 4715.5, "Management of Environmental Compliance at Overseas Installations" that:

Headquarters U.S. European Command (HQ USEUCOM) will:

1. Coordinate and maintain oversight of the implementation of the FGS by the Environmental Executive Agent.

2. Resolve any disputes between DoD components and the Environmental Executive Agent regarding the FGS in accordance with DoDI 4715.5.

The DoD Environmental Executive Agent for Germany, Headquarters U.S. Army Europe (HQ USAREUR), will:

1. Develop the FGS in accordance with DODI 4715.5.
2. Distribute the FGS and any subsequent amendments or guidance to the service components and DoD agencies with installations or facilities in Germany. Forward a copy of revised FGS via USEUCOM to the Military Departments and DUSD(ES) for information.
3. Revalidate and update the FGS at least every 2 years.
4. Consult with host-nation authorities on environmental issues, as required, to maintain effective cooperation on environmental matters.
5. Resolve requests for waivers from the DoD components.
6. Keep DoD components informed of current environmental developments and trends.

DoD Components and the Defense Logistics Agency (DLA) - Europe will:

1. Ensure that actions by DoD components at installations in Germany, as well as planning, budgeting, programming, and execution, comply with these standards.
2. Establish and implement an environmental compliance assessment program that includes internal assessments at least annually and, for major installations, external assessments at least every three years.
3. Designate Component Commanders or other officials who are authorized to apply for waivers or initiate appeals.
4. Notify the DUSD(ES) and all affected elements of command of significant environmental events and noteworthy environmental achievements, as appropriate.

C1.4 WAIVERS

If compliance with the FGS at particular installations or facilities would seriously impair operations, adversely affect relations with German authorities, or require substantial expenditure of funds at an installation that has been identified for closure or realignment removing the requirement, a DoD component may ask the Environmental Executive Agent to waive or authorize deviation from the particular standard. Waivers are not required for compliance projects already in progress or for compliance projects that have been programmed by the service components but remain unfunded, provided that those projects meet current FGS requirements. DoD components are encouraged to review plans for projects either in progress or programmed to insure that current standards have been incorporated into project design.

C1.4.1 WAIVER PROCEDURES

The Installation Commander, via the DoD component chain of command, will forward waiver requests to the Environmental Executive Agent. Waiver requests should specify, at a minimum:

1. The particular standard for which a waiver is requested;
2. The extent of the relief requested and the period that the waiver will be in effect;
3. The anticipated impact(s) of the waiver, if any, on human health and the environment or relations with German authorities over the period of the waiver; and
4. The justification for the waiver and if a complete waiver of the standard is requested, why a partial and/or temporary deviation would not be sufficient.

The Environmental Executive Agent will consult with the other DoD components and USEUCOM and grant or deny the request for waiver in whole, in part, or upon conditions. Waivers may require periodic reviews and reporting.

In the event that the Environmental Executive Agent denies a waiver, the DoD component may appeal to HQ USEUCOM for reconsideration. HQ USEUCOM and the Environmental Executive Agent will coordinate on final resolution.

C1.5 ESTABLISHMENT AND APPLICATION OF MORE PROTECTIVE CRITERIA

DoD components may issue supplementary criteria that are more protective of the environment than these FGS, provided that they obtain the concurrence of the Environmental Executive Agent, consider the impact upon German relations with other DoD components, and clearly identify variances from these FGS in all requests for resources.

C1.6 PERMITS

Article 53A of the revised NATO SOFA SA, effective 29 March 1998, provides that DoD components must obtain permits, licenses, or other forms of official approvals when required by German law. These permits are to be obtained by the German authorities on behalf of the DoD. DoD components will assist the German authorities applying for a permit on their behalf by providing all necessary information.

DoD components must comply with conditions contained in the permits. If the permit allows a less protective standard than prescribed in these FGS, the FGS will be the compliance standard unless a waiver is obtained.

Installations and facilities that were in existence on the date when the revised NATO SOFA SA entered into force (i.e., 29 March 1998) can still be operated in their existing scope after that date without the necessity of obtaining permits, licenses, or other forms of official approval. These “grandfathered” installations and facilities can be operated without permits unless there is a substantial change (operational or constructional) to them which requires an “amended permit” (*Änderungsgenehmigung*) under German proceedings for “subsequent decisions” (*nachträgliche Anordnungen*).

Any action that requires a permit, license, or other form of official permission in accordance with German law will be notified to the locally responsible Federal Assets Office (*Bundesvermögensamt* [BVA]). The BVA will process the necessary administrative steps to obtain the appropriate permit, license, or other form of official permission on behalf of DoD. For issues/activities that fall into the area of responsibility of the proponent, requests will be submitted from the proponent to the BVA. For NATO sites “owned” by the Federal Ministry of Defense (FMOD), the Military District Administration (*Wehrbereichsverwaltung* [WBV]) is the responsible agency to initiate and to process administrative proceedings on behalf of DoD.

Certificates obtained from organizations like TÜV, DEKRA, etc. do not fall within the definition of a permit, license or other form of official permission for which the BVA or WBV have responsibility. Requests for services (e.g., inspections) will be forwarded directly to these organizations without involving the BVA or WBV.

C1.7 TESTING

Testing is often called for in the FGS. Laboratory analyses necessary to implement FGS requirements should normally be conducted in a laboratory that has been certified by a U.S. or host nation regulatory authority for the applicable test method. In the absence of a laboratory that has been so certified, laboratory analyses may also be conducted at a laboratory that has established reliable compliance with quality assurance standards for the applicable test method that are generally recognized by appropriate industry or scientific organizations. When no specific testing protocol is specified, any German or U.S. method recognized by appropriate professional or technical organizations may be used. When a specific method is called for, that method will be used unless the Environmental Executive Agent approves an alternate method.

C1.8 LOCAL AGREEMENTS

DoD components will not make agreements with German authorities at any level that calls for compliance to standards different than these FGS without the approval of the Environmental Executive Agent.

C1.9 ACCESS TO INSTALLATIONS BY GERMAN AUTHORITIES

All German authorities at the Federal, *Land* (state), or local level have access to DoD accommodations to safeguard German interests. German police authorities have jurisdiction to investigate potential environmental offenses within installations and have a right to gain access to the installations in order to carry out necessary investigations. Access by responsible German authorities is subject to prior notification. In cases of emergencies and where there is danger in delay, access will be granted without notification. In all cases, access is subject to considerations of military security, in particular of the inviolability of classified areas, equipment, and documents. Federal authorities responsible for the accommodation (e.g., Federal Assets Office) can assist DoD components upon request. German authorities at the Land or local level do not need to notify German Federal authorities in order to gain access to DoD military facilities.

C1.10 LEGAL PROTECTIONS FOR U.S. FORCES EMPLOYEES

Legal protections afforded DoD personnel investigated or charged by a host nation with alleged offenses arising out of any act or omission done in the performance of official duty vary, depending upon the status of the individual under the NATO SOFA, revised NATO SOFA SA,

and other applicable international agreements. In general, there is a greater ability for the U.S. to assert a primary right to exercise criminal jurisdiction over a member of the force as opposed to a member of the civilian component. There is no such right with respect to local national employees. Accordingly, due consideration should be given to a military service member assuming responsibility for issues of alleged U.S. noncompliance raised by host nation authorities.

To maximize the protections afforded to DoD personnel under the revised NATO SOFA SA, bilateral agreements, and regulations, and to secure legal representation for the subjects of the enforcement action (including local national employees), installations, activities, and personnel should immediately contact their serving legal office when faced with possible or actual host nation enforcement actions. Installations will report possible or actual host nation enforcement actions

If the authorities seek to question a DoD employee regarding his or her official duties, the employee should be advised to contact the Local Legal Liaison Officer (LLLO) of the installation legal office. The LLLO should obtain clarification from the German authorities whether the employee is questioned as a suspect or a witness, and the employee advised accordingly. It may not be readily apparent whether the host nation legal proceeding is criminal or administrative in nature. This point should be clarified as soon as possible since different procedures may apply depending on the answer.

C1.10.1 COUNSEL FEES AND RELATED ASSISTANCE

Approval authorities and procedures for requests for counsel fees and related assistance are identified in USAREUR Regulation 550-56 / USNAVEUR Instruction 5820.13C / USAFE Instruction 51-705, "Exercise of Jurisdiction by German Courts and Authorities Over U.S. Personnel."

C1.10.2 CRIMINAL JURISDICTION

DoD policy is to maximize U.S. criminal jurisdiction to the extent permitted by applicable agreements. EUCOM Directive 45-3 and the component services directives cited in C1.10.1, above, define policy, responsibilities, and procedures for the exercise of jurisdiction" define policy, responsibilities, and procedures for the exercise of jurisdiction. The primary right to exercise jurisdiction under the revised NATO SOFA SA may be more difficult for DoD to claim in official duty cases involving civilian employees because they are not subject to the Uniform Code of Military Justice (UCMJ). U.S. jurisdiction is not available for local national employees. In view of these limitations, a military member should be identified, where possible, as the responsible DoD party in an enforcement action. If an assertion of the primary right to exercise jurisdiction is not appropriate or is denied in a case, consideration should be given to requesting a waiver of host nation jurisdiction.

C1.11 ENVIRONMENTAL COMPLIANCE ASSESSMENT

An assessment program is an integral part of environmental protection program management. The objectives of the environmental compliance assessment program are to:

1. Determine overall environmental compliance status;

2. Improve and enhance installation environmental compliance;
3. Improve and enhance installation environmental program management;
4. Identify and provide support for financial programs and budgets for environmental compliance program management;
5. Anticipate future environmental programs;
6. Ensure that the Environmental Executive Agents, DoD components, and DoD Installation Commanders are effectively addressing environmental problems; and
7. Ensure that all personnel are trained/educated in the environmental aspects of their job.

The military departments and defense agencies will conduct external environmental compliance assessments (i.e., utilizing personnel from a different installation or level of command or contractors) encompassing all applicable media at least once every three years or when directed by HQ USEUCOM. Each major installation will conduct an internal assessment covering all applicable media program areas each calendar year (except in years when external assessments are conducted).

Within every major installation, the Environmental Protection Council (EPC), or equivalent, is responsible for establishing and implementing the installation's internal environmental assessment program.

C1.12 DETERMINATION OF ENVIRONMENTAL EFFECTS

Article 54A of the revised NATO SOFA SA requires the assessment of environmental compatibility of all projects as early in the planning phase as possible. The assessment includes identification, analysis, and evaluation of potential effects of environmentally significant projects. The objective of the assessment shall be to avoid environmental burdens, or when such burdens are unavoidable, to include measures to mitigate the negative effects of the project.

C1.13 ENVIRONMENTAL EXECUTIVE AGENT

The Environmental Executive Agent for these FGS is the Commander, USAREUR. Any questions or comments pertaining to these FGS should be sent to:

Commander
USAREUR
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